



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,888	10/15/2003	Merle M. Waldron	2373.04US03	7556

7590 06/02/2004

Patterson, Thunte, Skaar & Christensen, P.A.  
4800 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402-2100

EXAMINER
----------


NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
----------	--------------

3634

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/686,888	<b>Applicant(s)</b> WALDRON, MERLE M. 	
	<b>Examiner</b> Jennifer E. Novosad	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings were received on March 25, 2004. These drawings are approved.

### ***Abstract***

Applicant is reminded of the proper content of an abstract of the disclosure. The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art (see lines 2-3).

### ***Claim Objections***

Claims 3 and 16 are objected to because of the following informalities:

In line 3 of claim 3, "system" should be changed to --rack--, in view of line 1 of claim 1.

In line 2 of claim 16, a --- (period) should be inserted after "shape".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 4, 7-9, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3634

Claim 1 recites the limitation "the polyhedron shaped products" in line 12. There is insufficient antecedent basis for this limitation in the claim. *To correct this*, it is suggested that "box items" in line 1 of claim 1 be changed to --polyhedron shaped products--. *Also*, in line 9 of claim 1, it is suggested that "product" be changed to --the products--, in view of the change to line 1. *Similarly*, in line 10, it is suggested that "a" (before "product") be changed to --the--.

Claim 3 recites the limitation "the stack of upright shelves" in line 3. There is insufficient antecedent basis for this limitation in the claim. Note line 4 of claim 1 which sets forth "vertically stacked shelves".

The limitation "at least one boss is configured" in line 1 of claim 4 renders the claim indefinite since the boss has not been properly set forth and hence the structural relationship of the elements is unclear. *To correct this*, it appears that perhaps the dependency of claim 3 could be changed from "1" to --2--.

Claim 7 recites the limitation "the sidewall portions" in line 2. There is insufficient antecedent basis for this limitation in the claim. It appears that "sidewalls" should be changed to --side--, in view of line 7 of claim 1.

Claim 8 is rendered indefinite since it is unclear what is being set forth by the language of the recitation "wherein each pocket module, wherein each group" in line 1. *Also*, the recitations "each group of liked shaped products" and "the display" lack antecedent basis in the claim.

Claim 9 is rendered indefinite since the claim depends from a proceeding, not preceding claim and thus the metes and bounds of the claim cannot be properly ascertained. It appears that claim 9 should depend from claim --1--, not claim "10". *Further*, the claim lacks proper antecedent basis for the following limitations: "the removal zone", and "said like shaped

Art Unit: 3634

products", "said pocket volume". *Finally*, the use of the phrase "may be" in line 6 renders the claim indefinite since what "may be" to one "may not be" to another and thus the metes and bounds of the claim cannot be properly ascertained.

Claim 15 recites the limitation "each shelf" in line 14. There is insufficient antecedent basis for this limitation in the claim. It is noted that "horizontal supports" are set forth in line 12 and it is unclear whether these are the same elements as the "shelves".

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,581,906 (Joyce '906) in view of U.S. Patent No. 5,988,407 (Battaglia '407).

Joyce '906 discloses an assembly comprising a plurality of vertically stacked shelves (10 and 12) whereby each shelf has an integral base portion (at 14), an integral back portion (at 46 in Figure 2), an integral top portion (at 24 in Figure 2), and an integral front constraint portion (at 50 in Figure 2) whereby the stack of shelves are rearwardly offset from one another (see Figure 4); the uppermost shelf (10) has an integral boss portion (at 26) defining a horizontal slot open downwardly which is sized to fit and engage with the top portion of a shelf disposed therebelow. It is noted that each shelf is considered to be G-shaped.

The claims differ from Joyce '906 in requiring: (a) plastic pocket modules disposed on each shelf (see claim 1, line 6) whereby the modules each comprise two side portions, a front portion, a back pusher portion, integral with one another and the pusher portion having a spring portion whereby the pusher portion extends at an angle between 0 and 90 degrees from the back wall portion (claim 7); (b) the modules to be made from clear plastic (see line 7 of claim 1) or a sheet of PETG with a specific thickness (claims 5 and 18); (c) a plurality of polyhedron shaped products; (d) the shelves arranged such that only the forwardmost product *can* be raised and removed vertically from each pocket (see claims 1 and 9); (e) a pair of bosses (claim 2); and (f) the height of the product to be less than the vertical spacing between shelves (claim 6) and at least 80% of the frontal surface area of the product to be visible (claim 8).

*With respect to (a)*, Battaglia '407 teaches a system comprising a grouping of like shaped products placed in pocket modules disposed in rows on stacked shelves, i.e., horizontal supports in an upright stack, whereby each module is comprised of plastic and having a pair of sidewall portions (54a and 54b) at left and right sides, a front portion (at 56 - see Figure 5), a back side (at 102), a top (at 36 in Figure 1) and a bottom (at 52 in Figure 1), an integral front wall portion (106) having a constraint portion and a pusher portion (66) having a spring portion (at 73, 75, 66 in Figure 2B) that is *substantially* planar and extending from the back side (generally at 60) at an angle between 0 and 90 degrees (see Figure 2B, at element 78) to substantially the front side thereof and an engagement portion (at 76) whereby when assembled the elements are considered to be integral, i.e., formed as a unit, with another.

Art Unit: 3634

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the assembly of Joyce '906 with pocket modules, as taught by Battaglia '407, for ease in organizational capabilities.

*With respect to (b)*, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the modules from the material specified in the claims for ease in economy and manufacture while allowing ease in use to the consumer.

*With respect to (c)*, although neither Joyce '906 nor Battaglia '407 explicitly show polyhedron shaped products stored therein, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have placed polyhedron shaped products in the modules since the modules are capable of holding such products therein while allowing for increased storage capabilities thereof.

*With respect to (d)*, it is noted that when the pocket modules of Battaglia are placed on the shelves of Joyce, the pocket modules are considered to be constrained between adjacent shelves. *Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the shelves are arranged such that only the forwardmost product *can* be raised and removed vertically from each pocket, thereby increasing securement and protection of items placed therein.

*With respect to (e)*, although Joyce '906 discloses only one boss, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the assembly of Joyce '906 with a pair of bosses, for ease in assembly.

Art Unit: 3634

*With respect to (f)*, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have placed products that have a height than the vertical spacing between shelves in the modules so that at least 80% of the frontal area is viewable, as required by the claims, for ease in placement and removal of the products therefrom while decreasing possible damage to the products when being removed or placed therein and allowing for ease in use to the consumer.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joyce '906 in view of Battaglia '407 as applied to claims 1, 2, and 5-9 above, and further in view of U.S. Patent No. 4,540,222 (Burrell '222).

The claims differ from the above references in requiring a side panel positioned adjacent the stack of shelves and attached thereto by fasteners extending through openings.

Burrell '222 teaches an assembly comprising a plurality of stacked, rearwardly extending shelves whereby a side panel (2) is positioned adjacent to the shelves and secured thereto by fasteners (20 and 21) that extend through openings (17 and 14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the assembly of Joyce '906 with a side panel, as taught by Burrell '222, for increased structural stability of the assembly.

Claims 10-14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battaglia '407 in view of U.S. Patent No. 5,665,304 (Heinen *et al.* '304).

Battaglia '407 discloses the system as advanced above. *With respect to claims 13 and 15*, the vertical spacing of the shelves can be varied, i.e., in Figure 2, a shelf could be placed in the slots (18) directly above the shelf therein, and is considered to be capable of being substantially



Art Unit: 3634

the same as the height of the pocket modules thereby constraining the removal zone between the pocket module and the adjacent shelf, whereby the zone of removal, i.e., between sides of the shelves is less than the zone of removal, i.e., between sides of the modules. *With respect to claim 15*, Battaglia '407 is considered to teach the structure capable of performing the method steps of constructing a rack of supports with each support having a row of modules whereby each module is shaped by a plurality of cut out portions of plastic sheet material to define a pair of sidewall portions, and a pusher portion that are unitary, i.e., the individual elements are considered to be *unitary* (i.e., assembled as a unit) once assembled. It is noted that the claims do not require that the pusher portion be "attached" to the back wall *portion* and thus the pusher is considered to "extend" from the back *side*.

The claims differ from Battaglia '407 in requiring: (a) a back wall portion extending between the sidewall portions (claims 10, 12, and 15); (b) the module to be made from plastic that is transparent (claim 11); (c) the access and removal zones to be constrained by the respective module and horizontal support (claim 13) so that not more than one of the products can be removed at one time by arranging a plurality of plurality of modules such that each shelf is in contact with and adjacent module (claim 15); and (d) heating (claim 15) and bending the plastic cut out portions to form the modules.

Heinen *et al.* '304 teach a pocket module (middle portion of Figure 1b) defined by a pair of sidewall portions (generally at 35), a front side (generally at 37), a back side having a wall (34) extending between the sidewalls and a pusher portion (at 5) extending therefrom whereby the pocket module is supported by a shelf (1) and the elements are made from a transparent plastic (see column 6, line 51). It is noted that the individual elements are considered to be

Art Unit: 3634

*unitary* (i.e., assembled as a unit) once assembled and that the claims do not require that the pusher portion be "attached" to the back wall *portion* and thus the pusher is considered to "extend" from the back *side*.

*With respect to (a)*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the module of Battaglia '407 with a back wall for increased stability of the module.

*With respect to (b)*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the modules from *transparent* plastic, as taught by Heinen *et al.* '304, for ease to the consumer, for aesthetic appeal, and for ease in economy.

*With respect to (c)*, although Battaglia '407 does not explicitly recite that the zones are constrained by the respective module and horizontal support, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have positioned the shelves of Battaglia directly above one another by attaching the shelves to the slots (18) so that the zones would be constrained thereby allowing for increased securement of items placed therein while allowing for increased organizational capabilities of the system.

*With respect to (d)*, although Battaglia '407 is silent as to how the modules are formed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the modules by heating and bending plastic thereby allowing ease in economy and manufacture.

Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heinen *et al.* '304 in view of Joyce '906.

Art Unit: 3634

Heinen *et al.* '304 disclose the structure of the display as advanced above whereby Heinen *et al.* are considered to be capable of performing the method steps shaping a plurality of planar cut out portions of plastic sheet material whereby each cut out portion providing for sidewall portions, a portion extending between the sidewall portions and a pusher portion that *extends* from the back *side*. It is noted that the individual elements are considered to be *unitary* (i.e., assembled as a unit) once assembled and that the claims do not require that the pusher portion be "attached" to the back wall *portion* and thus the pusher is considered to "extend" from the back *side*.

The claims differ from Heinen *et al.* '304 in requiring: (a) the method steps of constructing a rack (claim 15) of horizontal G-shaped (claim 16) supports that are rearwardly offset from one another (claim 17) and thereby constraining access to each volume of the modules; (b) heating and bending the cut out portions (claim 15); and (c) the plastic to be PETG (claim 18).

*With respect to (a)*, Joyce '906 teaches the structure of the display as advanced above whereby this structure of Joyce '906 is considered to be capable of performing the method steps of constructing a rack of horizontal G-shaped supports that are rearwardly offset from one another. *Accordingly*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed the modules of Heinen *et al.* '304 on the supports of Joyce '906 for increased organizational capacity and capabilities.

*With respect to (b)*, although Heinen *et al.* '304 are silent as to how the modules are formed, it would have been obvious to one of ordinary skill in the art at the time the invention

Art Unit: 3634

was made to have formed the modules by heating and bending plastic thereby allowing ease in economy and manufacture.

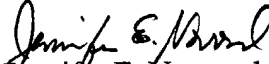
*With respect to (c)*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the modules from PETG for ease to the consumer, for aesthetic appeal, and for ease in economy.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Patent Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
May 26, 2004

Application/Control Number: 10/686,888

Page 12

Art Unit: 3634